

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

**24 HOUR FITNESS USA, INC. A
California corp. dba 24 HOUR
FITNESS,**

Petitioner,

NO. CV-11-0474-LRS

ORDER OF DISMISSAL

vs.

JAMES PAYNE,

Respondent.

The Court has previously ordered the petitioner 24 Hour Fitness USA, Inc. (“24 Hour”) to show that it properly served respondent Roby; and to show cause why this Court should not dismiss this action under the “first to file” rule and under the principles of comity and sound judicial administration that are of concern in the eight nearly identical cases filed in this district. More specifically, the Court was requesting petitioner show why this case should not be dismissed as duplicative of an earlier petition filed by respondent in the United States Court for the Northern District of California. Principles of comity and sound judicial administration counsel a court to decline jurisdiction over an action when a case involving the same parties and issues has previously been filed in another district. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir.1982). This Court also has had serious concerns, from the inception of the case, that 24 Hour was employing an insufficient method of service on the respondent.

The Court has reviewed the timely filed response to the Order to Show Cause and

1 the "Special Master's Report and Recommendations" filed on May 7, 2012 in the
2 Northern District of California, which report was attached to petitioner's response to the
3 show cause order. The Special Master filed a Report making recommendations on a
4 variety of matters, all of which centered on the parties' dispute over where arbitration
5 must occur. ECF No. 508 in Case No. 06-715 SC ("Report"). The Special Master
6 recommended that arbitration of all claims proceed within the Northern District of
7 California. Id. at 31-32. 24 Hour timely objected to the Special Master's Report (ECF
8 No. 520 in Case No. 06-715 SC). The Honorable Judge Conti of the Northern District
9 of California, however, adopted the Report with some modifications. (ECF No. 528 in
10 Case No. 06-715 SC) .

11 Of significance, Judge Conti granted Plaintiff Gabe Beauperthy's request for
12 injunctive relief under the first-to-file rule and enjoined 24 Hour from further
13 prosecuting or filing any out-of-district Petitions to Compel Arbitration against any of
14 the 983 individuals who presented demands for arbitration before JAMS in San
15 Francisco. Judge Conti further ordered 24 Hour to file a copy of this Order in each of
16 the currently pending out-of-district cases within seven (7) days of the signature date of
17 that Order. 24 Hour has filed Judge Conti's Order in the above-referenced case. In light
18 of the foregoing, the Court hereby **DISMISSES** this action and **DENIES as MOOT**
19 petitioner's Motion to Compel, ECF No. 1. The Clerk is directed to file this Order and
20 **CLOSE THE FILE.**

21 **DATED** this 13th day of August, 2012.
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23 *s/Lonny R. Suko*

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25 LONNY R. SUKO
26 UNITED STATES DISTRICT JUDGE
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